

## **Michigan Outstate Seller of Mixed Spirit Drink Licensing Requirements and General Information**

A **"mixed spirit drink"** means a drink produced and packaged or sold by a mixed spirit drink manufacturer or an outstate seller of mixed spirit drink which contains 10% or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials and which may also contain 1 or more of the following:

- (a) Water.
- (b) Fruit juices.
- (c) Fruit adjuncts.
- (d) Sugar.
- (e) Carbon dioxide.
- (f) Preservatives.

▪ MCL 436.1109(4)

**\*\*\* For purposes of Rules promulgated by the Commission, an OSSMS is treated as an Outstate Seller of Wine but is subject to the rules applicable to spirits for purposes for the purposes of rules promulgated by the Commission for manufacturing and labeling.**

▪ MCL 436.1109(8)

An **Outstate Seller of Mixed Spirit Drink ("OSSMS")** license:

- License issued to wine supplier by the Michigan Liquor Control Commission ("Commission") to ship mixed spirit drinks into Michigan and sell to Michigan wholesalers.
- Must be located in the United States (may be located in Michigan).
- Must be a holder of an Importer, Producer and/or Wholesaler Basic Permit issued by the Federal Bureau of Alcohol, Tobacco & Firearms ("BATF").
- May sell and deliver **only** to Michigan wholesalers.
- No direct shipments allowed from OSSMS to Michigan retailers or Michigan consumers.
- Must enter into exclusive territory agreements with their wholesalers.
- Responsible for registering all brands with the Commission.
- Responsible for payment of Michigan mixed spirit drink excise tax.
- \$300 annual license fee (licensing year is from May 1<sup>st</sup> to April 30<sup>th</sup> each year)
- \$1,000.00 continuous Surety Bond required.

**An OSSMS license may be issued to any of the following entities pursuant to Rule 436.1705 and the Liquor Control Code:**

- BOTTLER - A person located outside of this state, but in the United States, who bottles mixed spirit drink manufactured by another person. This person shall have a certificate or affidavit of identity from the manufacturer.
- BULK - A person located outside of this state, but in the United States, who ships and sells bulk mixed spirit drink to licensed Michigan manufacturers for blending, rectifying, or non-beverage use.
- DOMESTIC - A manufacturer located outside of this state, but in the United States, that produces and bottles its own mixed spirit drink.

- EXCLUSIVE SALES AGENT - A person located in the United States who is designated by the manufacturer of mixed spirit drink as its sole and exclusive sales agent in the United States.
- IMPORT - A person located in the United States who imports foreign mixed spirit drink and sells that foreign mixed spirit drink in this state. The actual importer must obtain the OSSW license.
- PURCHASER - A person located in the United States who purchases mixed spirit drink from a manufacturer or brand owner located outside of this state, but in the United States, if the total amount of mixed spirit drink shipped into this state manufactured by that OSSMS or brand owner is 150,000 liters or less per calendar year. The OSSMS licensee shall be responsible for the quality of wine shipped into and sold in this state. A person who obtains an OSSMS license pursuant to this subdivision, or who imports wine pursuant to this subdivision, and holds a wholesale license shall pay cash at the time of purchase for importation.

### **How To Apply For An Outstate Seller of Mixed Spirit Drink License:**

All applicants for an OSSMS license must submit the following documents:

- LICENSE APPLICATION \*\*\* - Submit executed “Application for Michigan Non-Retail License” (Form LC/MW-100). Applicants whose facility will be located in Michigan must submit an executed “Application For New Licenses or Application of Buyers for Transfer of Ownership or Interest in License” (LC-687).
- BOND APPLICATION \*\*\* - Surety Bond (Form MW-816), executed by an insurance company in the amount of \$1,000.00 for the initial license. Subsequent year’s surety bond amount is the average monthly wine excise tax paid for the preceding calendar year, with a minimum of \$1,000.00. This bond is continuous and requires a 30-day written notice to the Commission if terminated.
- LICENSE FEE - \$300.00 license fee paid by certified check, bank draft or money order, payable to the State of Michigan. Licensing year is May 1<sup>st</sup> through April 30<sup>th</sup>; license fee may not be prorated; and must be renewed annually by May 1<sup>st</sup>.
- FEDERAL BASIC PERMIT (Issued by BATF, submit whichever Permit is applicable.)
  - *Importer of foreign mixed spirit drink* – “Importer’s Basic Permit”
  - *Shipping bulk wine for blending purposes* - “Distilling, Rectifying, Blending and/or Bottling” Basic Permit
  - *Bottler* - Certificate or affidavit of identity from the manufacturer and “Distilling, Rectifying, Blending and/or Bottling” Basic Permit
  - *Domestic manufacturer* - “Distilling, Rectifying, Blending and/or Bottling” Basic Permit
  - *Exclusive Sales Agent (Domestic Wines Only)* – “Wholesaler’s Basic Permit” for yourself; “Distilling, Rectifying, Blending and/or Bottling” Basic Permit for each manufacturer represented as an ESA; a list of brands to be sold in Michigan; and a letter from each manufacturer represented as an ESA, stating that applicant is the exclusive sales agent in the U.S. for those specific brands

- *Purchaser of wine (Domestic Wine Only)* - Copy of your “Wholesaler’s Permit”; Copy of “Distilling, Rectifying, Blending and/or Bottling” Basic Permit from each manufacturer represented; a letter from the manufacturer stating who is the brand owner if the mixed spirit drink isn’t owned by the manufacturer. An OSSMS licensed under the *Purchaser* rule is limited to shipping no more than 150,000 liters per calendar year from each manufacturer or brand owner. This section doesn’t apply to imported products.

In addition to the LC-100 and other documents required by all applicants, **CORPORATIONS** must submit the following information pursuant to Rule 436.1109:

- Copy of current, filed Articles of Incorporation.
- Current “Certificate of Good Standing” from the state where incorporated if incorporated outside of this state.
- “Report of Corporate Officers, Board of Directors & Stockholders” (Form LC-52).

In addition to the LC-100 and other documents required by all applicants, **LIMITED LIABILITY COMPANIES (“LLC”)** must submit the following information pursuant to Rule 436.1110:

- Copy of current, filed Articles of Organization.
- Current “Certificate of Good Standing” from the state where LLC is organized in.
- Copy of the Operating Agreement, by-laws, or agreements entered into by the members.
- “Report of Limited Liability Companies Members, Managers and Assignees” (Form LC-52A).

Send all applications to: Michigan Liquor Control Commission  
Manufacturers & Wholesalers Section  
P.O. Box 30005  
Lansing, MI 48909  
(517) 322-1415  
[www.michigan.gov/cis](http://www.michigan.gov/cis) (Click on “Liquor Control”.)

### **Licensing Process:**

Upon submission of the required documents, the application will be submitted to the Commission at the earliest possible Licensing Meeting for review and consideration. The applicant is notified in writing of the Commission’s decision and provided with a copy of the Commission Order. If approved and the file is complete, the applicant will also be mailed the license at this time. If approved but additional documentation is required, the applicant will be advised of what steps need to be taken to complete the licensing process. If denied, the applicant will have the opportunity to an Appeal Hearing before the Commission.

## **License Fees:**

Initial license fee for an OSSMS license is \$300.00. Annual renewal fee for OSSMS is also \$300.00. Licenses are renewed annually on May 1. The license fee may not be prorated for part-year licensure. License fee is payable upon MLCC approval of your application.

- MCL 436.1525

## **Manufacturing & Labeling:**

Mixed spirit drinks shall be manufactured, identified and labeled in accordance with federal spirit regulations published in Code of Federal Regulations Title 27, part 19 and Title 27, part 5. Contact BATF for detailed manufacturing and labeling requirements.

- MCL 436.1109(5)(8), Rule 436.1825, Rule 436.1827, Rule 436.1829

## **Label Registration:**

All mixed spirit drink products sold in Michigan must have all labels approved by the Commission before the mixed spirit drink is sold in Michigan. The Commission may disapprove any label submitted for registration that is deemed to promote violence, racism, sexism, intemperance, or intoxication or to be detrimental to the health, safety, or welfare of the general public. To obtain Michigan approval, OSSMS must submit one copy of the Certificate of Label Approval (“COLA”) approved by BATF and one set of loose labels, if readily available. One copy of the COLA will be returned with the Michigan registration number stamped on it. There is no fee for Michigan label registration.

- MCL 436.1109(5)(8), Rule 436.1825, Rule 436.1829

## **Container Deposits:**

Beer, mixed wine drink (wine coolers) & mixed spirit drink (spirit coolers) sold in containers of one (1) gallon or less must comply with the Beverage Container Act (The Initiated Law of 1976) by requiring a deposit of not less than 10 cents per container when sold to consumers.

Containers must be clearly labeled with the name of this state and the deposit amount. “MI” or “MICH” are acceptable abbreviations for Michigan. The wholesaler who sells the returnable containers to their retail customers initiates the container deposit.

- MCL 445.571 – MCL 445.576

## **Michigan OSSMS Excise Tax Report:**

The Michigan excise tax on mixed spirit drink is \$ 0.48 (48 cents per liter). The OSSMS is responsible for paying the Michigan excise tax on all mixed spirit drink shipped and sold in Michigan. The “Michigan Mixed Spirit Drink Tax Report” (LC-891) is due with payment of the appropriate tax amount in the Lansing office of the Commission, postmarked on or before the 15<sup>th</sup> of each month, for mixed spirit drink shipped into Michigan during the preceding calendar month.

A copy of each corresponding invoice for mixed spirit drink shipments made during the preceding month must also be submitted along with the tax report. An OSSMS must submit the monthly tax report whether any shipments were made during the preceding month or not. Indicate “no shipments” on the report.

- MCL 436.1301, Rule 436.1725

## **Invoices:**

An OSSMS must provide each wholesaler with two (2) copies of each invoice at the time of each sale and delivery of mixed spirit drink.

- Rule 436.1720

### **Wholesaler Sales Territories:**

Section 307 of the Michigan Liquor Control Code of 1998, being MCL 436.1307, requires an OSSMS to grant an exclusive sales territory to each of its wholesalers within which the wholesaler shall be the distributor of the specified brand or brands of the manufacturer or OSSMS. The sales territory is not determined by the Commission but is agreed upon by the wholesaler and the OSSMS. The territory agreement should be in writing and the wholesaler must be provided with a copy of the agreement. Copies of territory agreements do not need to be filed with the Commission. With certain exceptions, a brand extension is not considered a new or different brand and must be assigned to the wholesaler that was granted the sales territory for the brand from which the brand extension resulted. Wholesalers are prohibited from selling to any retailer located outside of their sales territory.

- MCL 436.1307(5)

### **Sale of Mixed Spirit Drinks by Wholesalers:**

Mixed spirit drinks are sold through the three-tier distribution system. Licensed Mixed Spirit Drink Manufacturers and Outstate Sellers of Mixed Spirit Drinks are authorized to sell mixed spirit drinks to licensed Michigan wholesalers, who in turn may resell to licensed Michigan retailers. No sales may be made directly from a Mixed Spirit Drink Manufacturer or an OSSMS to a retailer.

**Wholesalers may only sell mixed spirit drinks to retail licensees who are authorized to sell spirit products. Retail licensees who are only authorized to sell beer and wine may not sell mixed spirit drinks.**

### **Cash Sales:**

All sales and purchases of alcoholic beverages between wholesalers and OSSMS must be for cash only. Payment by wholesalers to OSSMS should be made no later than when the wholesaler takes possession of the wine. (Payment may be mailed to OSSMS after shipment is verified.) Payment may be made prior to shipment but is not mandatory. Payment may also be made by EFT no later than the next business day after receipt of shipment.

- MCL 436.2013

### **Delivery to Wholesaler Or Warehouser Only:**

An OSSMS may ship and deliver mixed spirit drink only to the licensed premises of a Michigan wholesaler or to the licensed premises of a Michigan warehouser. Mixed spirit drink may not be delivered from an OSSMS to a Michigan retail licensee or a Michigan consumer.

- Rule 436.1719

### **Interest In Another License:**

Michigan statute strictly prohibits an OSSMS or any other supplier from holding any interest, directly or indirectly, in any other license. Examples of prohibited interests include: stock ownership in another license, leasing real estate to/from another licensee, interlocking officers or directors between licensees, financial interest in any manner of another licensee. A Michigan wholesaler may hold an OSSMS license in the same legal entity. An OSSMS may hold an Outstate Seller of Beer license or an Outstate Seller of Wine license in the same legal entity as the OSSMS license.

- MCL 436.1603

### **Salesperson License:**

A person employed or representing an alcoholic beverage supplier or wholesaler who sells, delivers, promotes or otherwise assist in the sale, delivery or promotion of alcoholic liquor in the State of Michigan must obtain a Salesperson license from the Commission. Form LC/MW-843 must be executed and submitted to the Commission with a \$35.00 fee. Form LC/MW-843 is available from the Commission Website at: [www.michigan.gov/cis](http://www.michigan.gov/cis) (Click on “Liquor Control”).

- MCL 436.1853

### **Price Posting:**

OSSMS are not required to post their prices to wholesalers with the Commission. Michigan wholesalers are required to post their prices to retailers with the Commission. Mixed spirit drink wholesalers must post their prices quarterly and must post prices for new products or price changes with the Commission. The wholesaler must maintain any temporary price reduction for no less than 14 consecutive calendar days.

- Rule 436.1726

### **Samples:**

OSSMS and wholesalers are allowed to sample their products with on-premises or off-premises retail licensees and the retailer’s employees. Sample tastings may not be offered to consumers. All containers used to sample products with retailers must be marked with the word “Sample” with lettering at least ½-inches high. While suppliers and wholesalers may offer tasting samples from multiple beverages, only one (1) sample container of 750 ml size or smaller may be left with a retail licensee for sampling by the retailer and their staff. Again, the container must be marked “Sample”. A sample container must be removed from the premises within 24 hours and again may not be sampled by consumers.

- Rule 436.1001, Rule 436.1421, Rule 436.1511, Rule 436.1513, Rule 436.1863

### **Aid and Assistance:**

Section 609 of the Code, being MCL 436.1609, and Rule 436.1035 prohibit an alcoholic beverage supplier or wholesaler from aiding or assisting any other licensee by giving them anything of value. Further, a licensee is prohibited from accepting aid and assistance from another industry member. Basically, alcoholic beverage suppliers are prohibited from giving anything of value to wholesalers or retailers. Likewise, wholesalers are prohibited from giving anything of value to retailers. This principle is intended to provide a level playing field for all industry members. Suppliers are prohibited from conducting incentive contests offering awards or prizes to wholesalers or their employees. Suppliers and wholesalers are prohibited from conducting incentive promotions offering awards or prizes to retailers or their employees. Suppliers may not give anything of value to their wholesalers or their employees. Suppliers and wholesalers are prohibited from giving anything of value to retail licensees, including but not limited to: alcoholic beverages, merchandise, furniture, fixtures, equipment, uniforms, cash or loans, labor, etc. While wholesalers and suppliers may provide point-of-sale materials such as posters, banners, table tents, flyers, etc., to retailers promoting their brands and prices, they are prohibited from providing anything that has any secondary use, value or purpose, other than actual advertising value to retailers without prior Commission approval. This same principle prohibits suppliers and wholesalers from providing free advertising, incentive programs, free or discounted product, draft system installation and maintenance, etc. Violations in the aid and assistance statute will result in all participants (retailer, wholesaler and supplier) being cited before the Commission.

- MCL 436.1609, Rule 436.1035

## **Rebates, Special Purchase Allowances, & Quantity Discounts:**

An OSSMS is prohibited from rebating any money to wholesalers. OSSMS may offer special purchase allowances to wholesalers as long as the allowance is offered to all wholesalers and is based on the wholesaler purchases at the time of the allowance and not based on past sales. OSSMS may offer quantity discounts to their wholesalers but may not offer free merchandise to their wholesalers.

- MCL 436.1609

## **Michigan Three-Tier Distribution System:**

Michigan is a highly regulated three-tier distribution state. The Commission licenses and regulates alcoholic beverage suppliers, wholesalers and retailers. All alcoholic beverages sold to Michigan consumers must go through each of the licensed distribution tiers. Each of the distribution tiers operates independently of the others. An OSSMS license is required to ship wine into Michigan and ***is authorized to ship/sell wine to licensed Michigan wholesalers only.*** The Michigan wholesaler is then authorized to ship/sell to the licensed Michigan retailer. The licensed Michigan retailer is the only entity authorized to sell and deliver alcoholic beverages to Michigan consumers. **Under no circumstances may an OSSMS or any other out-of-state company ship alcoholic beverages directly to Michigan consumers.**

## **How To Contact BATF:**

BATF may be contacted as follows: [www.atf.treas.gov](http://www.atf.treas.gov)

### Federal Basic Permits:

BATF

Technical Services

550 Main St., Rm 6525

Cincinnati, OH 45202

(513) 684-3335

### Federal Label Approvals:

BATF

Product Compliance Branch

650 Massachusetts Ave., N.W.

Washington, DC 20226

(202) 927-8140

### Michigan Regional Office:

BATF

1155 Brewery Park Blvd.

Suite 300-A

Detroit, MI 48207-2602

(313) 393-0085

## **How To Contact The Michigan Liquor Control Commission:**

Questions relating to Outstate Sellers of Mixed Spirit Drinks or other non-retail licenses may be directed to:

**Michigan Liquor Control Commission**

**Manufacturers & Wholesalers Section**

**7150 Harris Drive**

**P.O. Box 30005**

**Lansing, MI 48909-7505**

**Phone: (517) 322-1415**

**Fax: (517) 322-5046**

**E-mail: [twhite@michigan.gov](mailto:twhite@michigan.gov)**

**[www.michigan.gov/cis](http://www.michigan.gov/cis) (Click on "Liquor Control" in left-hand column.)**